



WEB COPY



CMA No. 908 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 908 of 2023

1.N. Kasthuri

2.Revathi

3.N. Senthilkumar

4.N. Dhanasekaran

5.N. Srinivasan

6.Indhumathi

7.N. Thiagarajan

... Appellants

Versus

1.V. Kamala Kannan

2.Reliance General Insurance Company Limited,
No.6, Reliance House, 6th Floor,
Haddows Road, Opposite Shastri Bhavan,
Nungambakkam, Chennai – 600 034.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 5598 of 2016 dated 01.10.2021 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.



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For Appellants : Mr. J. Ravikumar.

WEB COPY For Respondents : Ms. C. Bhuvanasundari for R2.

R1 – Ex parte.

J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No.5598 of 2016 dated 01.10.2021.

2.The claimants/appellants have filed the claim petition stating that on 05.07.2016 at about 12.30 p.m., while the deceased was riding his bicycle in a public road, an auto belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and hit the bicycle of the deceased as a result of which the deceased sustained fatal injuries.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed counter stating that the accident took place only due to the negligence of the deceased; and that in any



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case, the compensation claimed was excessive and prayed for dismissal of the appeal.

5.The appellants examined PW1 and PW2 and marked Ex.P.1 to Ex.P.21. The second respondent examined RW1 and marked Ex.R.1 to Ex.R.3.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the auto insured with the second respondent and directed the second respondent to pay a compensation of Rs.3,00,400/- to the appellants.

7.The learned counsel for the appellants submitted that though PW1 who is the first appellant had deposed that the deceased was working as Plumber and Electrician, the Tribunal fixed a meagre notional income of Rs.6,000/-; and that the Tribunal had not awarded compensation under the head Loss of love and affection for the appellants 2 to 7 and prayed for enhancement.



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WEB COPY 8. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants sought permission of this Court to dispense with the notice to the first respondent and has made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent, per contra, submitted that though the appellants claim that the deceased was working as Plumber, there is no document produced either to prove the avocation or income; and that the deceased was nearly 77 years old and therefore, the version of the appellants regarding the avocation has to be rejected. Hence, the learned counsel submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

10. The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.



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11. On perusal of the records, it is seen that the deceased was aged 76 years. Though PW1 had deposed before the Tribunal that the deceased was working as a Plumber and Electrician, no document was produced to prove the income or avocation. However, considering the age of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.10,000/- per month as notional income. Since the deceased was aged 76 years, the multiplier applicable is 4 and $1/3^{\text{rd}}$ has been deducted towards personal expenses since the first appellant who is the wife of the deceased is totally dependent on the deceased and the other appellants were not fully dependent on the deceased. Thus, the compensation under the head loss of dependency would be $\text{Rs.10,000/-} \times 12 \times 4 \times 2/3 = \text{Rs.3,20,000/-}$. The Tribunal had awarded a meagre sum of Rs.40,000/- under the head loss of love and affection. Since the appellants are each entitled to Rs.40,000/-, a sum of Rs.2,80,000/- is awarded under the said head. Since no amount has been awarded under the head transport expenses, Rs.10,000/- is awarded under the said head. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	2,30,400	3,20,000	Enhanced
2.	Loss of Love and Affection	40,000	2,80,000	Enhanced
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Transport Expenses	---	10,000	Granted
	Total	3,00,400	6,40,000	Enhanced by Rs.3,39,600/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,00,400/- is hereby enhanced to Rs.6,40,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with proportionate interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first appellant is entitled to withdraw Rs.4,00,000/- and the second to seventh appellants are entitled to withdraw Rs.40,000/- each along with proportionate interest and costs,



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less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

26.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accidents Claims Tribunal
II Small Causes Court, Chennai.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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